

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**R.K. et al.,**

**Plaintiffs,**

**v.**

**GOVERNOR BILL LEE, in his official  
capacity as GOVERNOR OF  
TENNESSEE, et al.,**

**Defendants.**

**No. 3:21-cv-00725**

**ORDER**

Currently pending before the Court are requests by Plaintiffs and Governor Lee to allow video testimony at tomorrow’s preliminary injunction hearing for the following witnesses: (1) Dr. Jay Bhattacharya, (2) Dr. Sara Cross, (3) Dr. Jason Abaluck, and (4) Dr. Marilyn Augustyn. (Doc. Nos. 51, 60). The parties argue that remote testimony is necessary because each witness resides outside of the Middle District of Tennessee. (*Id.*). The Court will grant the parties’ motions subject to the following safeguards, which are necessary to ensure accurate video transmission without undue influence by third parties.


Federal Rule of Civil Procedure 43 provides that video testimony may be taken “with appropriate safeguards.” Fed. R. Civ. P. 43(a). Such safeguards should include: (1) assurance that the witness can be heard and understood by the Court and the parties; (2) “that the witness testify alone, in a closed room, free of any outside influence on their testimonies”; (3) that Governor Lee “mark all documentary evidence [he] intend[s] to provide to the witness prior to” the hearing; (4) that Plaintiffs “be allowed a sufficient opportunity to cross-examine” the witness; and (5) that

Plaintiff be able to question them via instantaneous transmission. Pecora v. Barbera, No. 1:15-cv-73, 2017 U.S. Dist. LEXIS 230915, at \*2–\*3 (E.D. Tenn. Feb. 28, 2017).

Accordingly, Governor Lee's Unopposed Motion to Allow Testimony by Remote Means (Doc. No. 51) regarding the testimony of Dr. Bhattacharya and Plaintiffs' Unopposed Motion to Present Testimony Via Telephone or Video Conference regarding Dr. Cross, Dr. Abaluck, and Dr. Augustyn (Doc. No. 60) are **GRANTED**. The parties **SHALL** offer the testimony by video only. The Courtroom Deputy will send a link for the video before 9:30 a.m. on October 5, 2021.

As a housekeeping matter, the Court will grant several additional, pending motions. The Tennessee Chapter of the American Academy of Pediatrics and American Academy of Pediatrics' Motion for Leave to File as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction (Doc. No. 54), Plaintiffs' Unopposed Motion for Leave to File Excess Pages (Doc. No. 58), Plaintiffs' Motion to Appear Pro Hac Vice for attorney Jeffrey Dubner (Doc. No. 55), and Plaintiffs' Motion to Appear Pro Hac Vice for attorney Samara Spence (Doc. No. 56) are **GRANTED**.

IT IS SO ORDERED.

  
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WAVERLY D. CRENSHAW, JR.  
CHIEF UNITED STATES DISTRICT JUDGE